

Exhibit C

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT (FORM C)**

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

Case Caption: In the Matter of: Motors Liquidation Company. Celestine Elliott, Lawrence Elliott, Berenice Summerville, v. General Motors LLC; Wilmington Trust Company; Participating Unitholders; Ignition Switch Plaintiffs, Ignition Switch Pre-Closing Accident Plaintiffs, Groman Plaintiffs.	District Court or Agency:	Judge:
	Bankr. S.D.N.Y.	Robert E. Gerber
	Date the Order or Judgment Appealed from was Entered on the Docket:	District Court Docket No.:
	June 01, 2015	09-50026 (REG)
	Date the Notice of Appeal was Filed:	Is this a Cross Appeal?
	September 9, 2015	<input checked="" type="checkbox"/> Yes No

Attorney(s) for Appellant(s): Plaintiff Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
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Attorney(s) for Appellee(s): Plaintiff Defendant	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	See attached				

Has Transcript Been Prepared?	Approx. Number of Transcript Pages:	Number of Exhibits Appended to Transcript:	Has this matter been before this Circuit previously?	Yes	<input checked="" type="checkbox"/> No
Yes	328	0	If Yes, provide the following:		
			Case Name:		
			2d Cir. Docket No.:	Reporter Citation: (i.e., F.3d or Fed. App.)	

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; (3) A COPY OF THE NOTICE OF APPEAL AND A CURRENT COPY OF THE LOWER COURT DOCKET SHEET; AND (4) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS APPEAL, INCLUDING TRANSCRIPTS OF ORDERS ISSUED FROM THE BENCH OR IN CHAMBERS.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM A LIST OF THE ISSUES PROPOSED TO BE RAISED ON APPEAL, AS WELL AS THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: JURISDICTION

1. <u>Federal Jurisdiction</u>		2. <u>Appellate Jurisdiction</u>	
U.S. a party	Diversity	Final Decision	Order Certified by District Judge (i.e., Fed. R. Civ. P. 54(b))
<input checked="" type="checkbox"/> Federal question (U.S. not a party)	Other (specify): _____	Interlocutory Decision Appealable As of Right	<input checked="" type="checkbox"/> Other (specify): <u>28 U.S.C. § 158(d)(2)(A)</u>

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: DISTRICT COURT DISPOSITION (Check as many as apply)

1. <u>Stage of Proceedings</u>	2. <u>Type of Judgment/Order Appealed</u>	3. <u>Relief</u>
<input type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input checked="" type="checkbox"/> After trial	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/FRCP 12(b)(1) lack of subj. matter juris. <input type="checkbox"/> Dismissal/FRCP 12(b)(6) failure to state a claim <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) frivolous complaint <input type="checkbox"/> Dismissal/28 U.S.C. § 1915(e)(2) other dismissal	<input checked="" type="checkbox"/> Damages: <input type="checkbox"/> Sought: \$ _____ <input type="checkbox"/> Granted: \$ _____ <input type="checkbox"/> Denied: \$ _____
	<input checked="" type="checkbox"/> Dismissal/other jurisdiction <input checked="" type="checkbox"/> Dismissal/merit <input checked="" type="checkbox"/> Judgment / Decision of the Court <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):	<input checked="" type="checkbox"/> Injunctions: <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Denied

PART C: NATURE OF SUIT (Check as many as apply)

1. <u>Federal Statutes</u>	2. <u>Torts</u>	3. <u>Contracts</u>	4. <u>Prisoner Petitions</u>
<input checked="" type="checkbox"/> Antitrust <input checked="" type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce, <input type="checkbox"/> Energy <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Soc. Security <input type="checkbox"/> Environmental	<input type="checkbox"/> Freedom of Information Act <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Tax	<input type="checkbox"/> Admiralty/ <input type="checkbox"/> Maritime <input type="checkbox"/> Assault / <input type="checkbox"/> Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Products Liability <input type="checkbox"/> Other (Specify):
5. <u>Other</u>	6. <u>General</u>	7. Will appeal raise constitutional issue(s)?	
<input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Will appeal raise a matter of first impression? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

1. Is any matter relative to this appeal still pending below? <input checked="" type="checkbox"/> Yes, specify: <u>Bankruptcy proceedings ongoing.</u> <input type="checkbox"/> No
2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:
(A) Arises from substantially the same case or controversy as this appeal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(B) Involves an issue that is substantially similar or related to an issue in this appeal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the <i>other</i> action(s):
Case Name: In re Motors Liquidation Co.
Docket No. 15-2844; 15-2847
Citation:
Court or Agency: 2d Circuit
Name of Appellant: Elliott et. al.; (Cross Appellant) General Motors LLC

Date: 9/23/15	Signature of Counsel of Record: /s/ Lisa H. Rubin
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NOTICE TO COUNSEL

Once you have filed your Notice of Appeal with the District Court or the Tax Court, you have only 14 days in which to complete the following important steps:

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Second Circuit in accordance with LR 25.1.
3. Pay the \$505 docketing fee to the United States District Court or the \$500 docketing fee to the United States Tax Court unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 DAYS, YOUR APPEAL WILL BE DISMISSED. SEE LOCAL RULE 12.1.

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FORM C - ADDENDUM A

Wilmington Trust Company, as Trustee for and Administrator of the Motors Liquidation Company GUC Trust (the “GUC Trust”), seeks affirmance of the portion of the bankruptcy court’s judgment entered in this action on June 1, 2015 (D.E. 13177) (the “Judgment”) and the corrected Decision on Motion to Enforce Sale Order entered in this action on April 15, 2015 (D.E. 13290 Ex. A) (the “Decision on the Threshold Issues”), holding that, under the doctrine of equitable mootness, “assets transferred to the GUC Trust under the Plan could not now be tapped to pay” claims filed by Plaintiffs. *In re Motors Liquidation Co.*, 529 B.R. 510, 529 (Bankr. S.D.N.Y. 2015). Should this Court reverse, vacate, or modify the bankruptcy court’s equitable mootness holding in any manner adverse to the GUC Trust, the GUC Trust seeks reversal or vacatur of the Judgment and Decision on the Threshold Issues on the four bases articulated in Addendum B.

1. Nature of the Action

A. Background

On June 1, 2009, General Motors Corporation (“Old GM”) and certain of its subsidiaries filed a petition in the United States Bankruptcy Court for the Southern District of New York to sell substantially all of its assets, pursuant to 11 U.S.C. § 363 (the “Sale”), to a company now known as General Motors LLC (“New GM”). The bankruptcy court adopted procedures for the Sale and objecting to it, ordered

direct mail and publication notice to creditors, and held a hearing. The notices did not disclose that certain Old GM vehicles contained an ignition switch or any other defect that could cause personal injury, death, economic loss, or other injuries to persons or property.

On July 5, 2009, the bankruptcy court issued a Sale Order and Injunction approving the Sale (D.E. 2968), pursuant to the terms in the Amended and Restated Master Sale and Purchase Agreement (the “Sale Agreement”). Under that Agreement, New GM acquired substantially all of Old GM’s assets in exchange for about \$45 billion, and New GM assumed certain of Old GM’s liabilities, but purchased the assets “free and clear” of all other liabilities. The Sale closed on July 10, 2009.

Thereafter, Old GM changed its name to Motors Liquidation Company (“MLC”). On March 18, 2011, MLC and the remaining debtors filed their second amended Chapter 11 plan. The bankruptcy court confirmed that Plan on March 29, 2011, and the Plan became effective two days later. The Plan has been substantially consummated. *See In re Motors Liquidation Co.*, 529 B.R. at 585.

The GUC Trust was formed as part of the Plan on March 30, 2011. It is a statutory trust under the Delaware Statutory Trust Act. As relevant for this action, the GUC Trust is responsible for resolving disputed general unsecured claims and distributing New GM stocks and warrants (or the proceeds thereof) and GUC Trust

Units to the GUC Trust Beneficiaries. Those beneficiaries, as relevant here, are limited to holders of allowed general unsecured claims against the debtors and holders of units of beneficial interest in the GUC Trust. “The GUC Trust Units are freely tradable. As reported by Bloomberg Finance, as of October 21, 2014, approximately 100 million GUC Trust Units had been bought and sold since June 14, 2012, and the aggregate value of those GUC Trust Units (based on daily closing prices) totaled approximately \$2.1 billion.” *Id.* at 536 n.51.

“[B]y September 30, 2014, the GUC Trust had distributed more than 89% of the New GM Securities and nearly 32 million GUC Trust Units.” *Id.* at 537. As of March 31, 2015, the GUC Trust had successfully resolved claims representing over 99% of the dollar amount of initial disputed general unsecured claims. *See Motors Liquidation Company GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of March 31, 2015*, D.E. 13118 at 4 (Bankr. S.D.N.Y. April 22, 2015).

B. New GM’s 2014 Recalls and Subsequent Litigation

In 2014, New GM issued 80 recalls affecting 13.5 million vehicles worldwide for various defects, including the ignition switch defect. The recalls, which covered model years 1997 to 2015, have triggered over 270 lawsuits. *See General Motors Company, Quarterly Report 14 (Form 10-Q) (July 23, 2015).*

Most of those suits are now part of a multi-district litigation in the Southern District of New York, and consolidated in an omnibus complaint.

In response, New GM moved the bankruptcy court to enjoin those lawsuits as subject to the injunction provision of the Sale Agreement, which limited New GM's liability to certain claims. New GM suggested that plaintiffs explore causes of action against the GUC Trust.

The bankruptcy court ordered the parties to proceed on a stipulated factual record, and to address four so-called "Threshold Issues":

- **The Due Process Issue:** First, whether the plaintiffs' procedural due process rights were violated in connection with the entry of the Sale Order and Injunction or its enforcement;
- **The Remedies Issue:** Second, assuming plaintiffs' due process rights were violated, whether a remedy could be fashioned and against whom;
- **The Assumed Versus Retained Liabilities Issue:** Third, whether claims asserted against New GM could be asserted against the Old GM bankruptcy estate and/or the GUC Trust;
- **The Equitable Mootness Issue:** Fourth, whether any claims asserted against the Old GM bankruptcy estate and/or the GUC Trust would be equitably moot.

2. Result Below

Following briefing and two days of oral argument, the bankruptcy court issued its Decision on the Threshold Issues.

On the first threshold issue, the court found that Old GM knew enough about the ignition switch defect in 2009 to make “owners of cars with Ignition Switch Defects ... ‘known’” creditors, and that because only publication notice was given, “Plaintiffs were denied the notice due process requires.” *In re Motors Liquidation Co.*, 529 B.R. at 559. Nonetheless, the court found that Economic Loss Plaintiffs, used-car purchasers, and Pre-Closing Accident Plaintiffs had not established a due process violation stemming from the Sale Order’s “free and clear” provision because they could not demonstrate that they were prejudiced by the deficient notice. *Id.* at 565, 572-73. However, the court found that the Economic Loss Plaintiffs had suffered a due process violation and were prejudiced by the overbreadth of the Sale Order that barred them from pursuing claims against New GM based solely on New GM’s independent misconduct. *Id.* at 565; *see id.* at 573.

On the second threshold issue, the court found that the appropriate remedy for the Economic Loss Plaintiffs, who suffered a due process violation and were prejudiced by the overbreadth of the Sale Order as to claims based on New GM’s independent misconduct, was to deny enforcement of the Sale Order as against

those plaintiffs, without invalidating the entire Sale Order or finding it void as to all claimants. *Id.* at 527-28.

On the third threshold issue, the court found that, under the Sale Agreement, New GM did not assume liability for claims based on Old GM's conduct. *Id.* at 528.

On the fourth threshold issue, the court found that any claims by the Ignition Switch Plaintiffs against Old GM or the GUC Trust would be equitably moot, because allowing recourse against the GUC Trust assets would require modification of the order confirming the Plan, impair the rights of the Unitholders, and be unjust to unitholders who acquired GUC Trust Units in post-confirmation trading with the understanding that the universe of claims against the GUC Trust could not expand. *Id.* at 528-29. The court noted the plaintiffs did not "pursue[] with diligence all available remedies" because of their "tactical choice" not to seek a stay of the GUC Trust's November 2014 distribution to its beneficiaries. *Id.* at 590-91.

On June 1, 2015, the bankruptcy court issued its Judgment implementing the Decision on the Threshold Issues (D.E. 13177), and entered an order certifying the Judgment for direct appeal to this Court (D.E. 13178). After notices of appeal were filed by others, the GUC Trust timely filed its notice of cross-appeal (D.E. 13204) to preserve its rights. After certain plaintiffs who indicated that they were

challenging the bankruptcy court's equitable mootness holding filed a petition for permission to appeal with this Court, the GUC Trust cross-petitioned for permission to take its cross-appeal directly to this Court. *See* GUC Trust Response and Cross-Petition for Permission for Direct Cross-Appeal, No. 15-1958, ECF No. 33 (2d Cir. July 2, 2015). This Court granted the petitions and cross-petitions for direct appeal on September 9, 2015. Order, No. 15-1958, ECF No. 107 (2d Cir. Sept. 9, 2015).

3. Notice of Appeal and Lower Court Docket Sheet

Attached as Exhibit A is the GUC Trust's Notice of Cross-Appeal, *In re Motors Liquidation Corp.*, No. 09-50026 (REG), D.E. 13204 (Bankr. S.D.N.Y. June 15, 2015).

Attached as Exhibit B is a copy of the current docket sheet in the lower court, in *In re Motors Liquidation Corp.*, No. 09-50026 (REG) (Bankr. S.D.N.Y.).

4. Other Opinions and Orders that Form the Basis for this Appeal

Attached as Exhibit C is the bankruptcy court's Order (I) Authorizing Sale Of Assets Pursuant To Amended And Restated Master Sale And Purchase Agreement With NGMCO, Inc., A U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases In Connection With The Sale; And (III) Granting Related Relief,

In re Motors Liquidation Corp., No. 09-50026 (REG), D.E. 2968 (Bankr. S.D.N.Y. July 5, 2009).

Attached as Exhibit D is the bankruptcy court's corrected Decision on Motion to Enforce Sale Order, *In re Motors Liquidation Corp.*, No. 09-50026 (REG), D.E. 13290 (Bankr. S.D.N.Y. April 15, 2015).

Attached as Exhibit E is the bankruptcy court's Judgment, *In re Motors Liquidation Corp.*, No. 09-50026 (REG), D.E. 13177 (Bankr. S.D.N.Y. June 1, 2015).

FORM C - ADDENDUM B

Issues To Be Raised On Cross-Appeal

1. Did the Bankruptcy Court err in holding that some or all of the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs had claims under 11 U.S.C. § 101(5)(A) in July 2009, when they could not have contemplated their causes of action at that time and, in some cases, did not own or lease a GM vehicle until after entry of the Sale Order?
2. Did the Bankruptcy Court err in holding that in order to establish a due process violation in connection with entry of the Sale Order, the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs must demonstrate in a “non-speculative fashion” that they were prejudiced by their lack of a full and fair opportunity to be heard prior to entry of the Sale Order?
3. Did the Bankruptcy Court err in holding that, with the exception of the Ignition Switch Plaintiffs’ Independent Claims, the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs failed to demonstrate prejudice in connection with entry of the Sale Order?
4. Did the Bankruptcy Court err in holding that the Ignition Switch Plaintiffs’ alleged economic losses from New GM’s recalls and New GM’s violation of federal recall laws do not constitute Assumed Liabilities or otherwise

implicate New GM's obligations under the Amended and Restated Master Sale and Purchase Agreement, dated June 26, 2009?

Each of the foregoing issues rests on conclusions of law that this Court should review *de novo*. *In re Bernard L. Madoff Inv. Sec. LLC*, 740 F.3d 81, 87 (2d Cir. 2014). To the extent the issues also rest on findings of fact, this Court should apply the clearly erroneous standard. *Id.*